IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

MFA.No. 562 of 2000(D)

O.P(MV).NO.153/1997 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD.
.....

APPELLANT/PETITIONER:

RAJEEVI, W/O. LATE PURUSHOTHAMAN,
AGED 24 YEARS, RESIDING AT
EDIYADKA HOUSE, POST PERLA,
ENMAKAJE VILLAGE, KASARAGOD TALUK,
KASARAGOD DISTRICT.

BY ADV. SMT.R.PADMAKUMARI.

RESPONDENTS/ RESPONDENTS:
----

1. **N. ABDUL SATHER, S/O. ANDUNHI,**
   AGED 26 YEARS, RESIDING AT NATTY HOUSE,
   P.O. PUNCHA, BANTWAL TALUK, D.K. DISTRICT,
   KARNATAKA STATE.

2. **ANDHUNHI BEARY, S/O. KUNHIPPA HAJI,**
   RESIDING AT NATTY HOUSE,
   POST PUNCHA, BANTWAL TALUK, D.K. DISTRICT,
   KARNATAKA STATE.

3. **THE BRANCH MANAGER,**
   UNITED INDIA INSURANCE COMPANY LIMITED,
   BRANCH OFFICE -III, BRIDGE ROAD,
   BALMATTA, MANGALORE - 575 001.

BY ADV. SRI.SIBY MATHEW,
SRI.WILSON URMESE.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 3101/2000 IN M.F.A. NO. 562/2000

DISMISSED

SD/- J.B.KOSHY, JUDGE.

08/10/2007. **SD/- K. HEMA, JUDGE.**

//TRUE COPY//

prv.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.562 OF 2000

Dated 8th October, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner sustained serious injuries in a motor accident. She alleged that the accident occurred due to the negligence of the first respondent as she was knocked down by a jeep bearing registration No. KA 19M/4391 driven by the first respondent. The above jeep was owned by the second respondent and insured by the third respondent insurance company. Negligence of the first respondent, coverage of insurance by the third respondent insurance company etc. were found proved. But, against a claim for Rs.7,32,000/=, Tribunal granted only an amount of Rs.2,60,850/=. Apart from the lacerated wound, she sustained fracture of supracondylar of right femur and swelling and deformity over the right knee joint. He was in the hospital for 35 days. The petitioner was admitted on 9.2.96 and discharged on 24.2.96. Thereafter, she was again re-admitted on 6.3.96 and was discharged on 21.4.96. Ext.A6 series are the certificates issued by the consultant orthopaedic surgeon of the said hospital stating that the petitioner was treated for fracture of femur and she was operated upon. Ext.A7 series are the discharge summaries which reiterate the admission and discharge of the petitioner from 9.2.96 to 24.2.96 and from 6.3.96 to

21.4.96. It also shows that the petitioner was admitted and treated from 5.8.96 to 19.1.97 and from 9.8.97 to 20.8.97. Ext.A7 series further show that the petitioner was operated upon on 12.2.96 and condylar fixation was done. Between 6.3.96 and 21.4.96, because of the complaint of pain and oozing from the suture site, plating was done with dressing. The admission between 5.8.96 to 19.1.97 was due to severe pain around the right knee joint surrounding the scar site. Her knee movement was restricted due to pain. During the admission of the petitioner from 9.8.97 and 20.8.97, sequestrectomy was done under general anaesthesia on 13.8.'97. The petitioner had sinus present over lower one third of right leg with purulent discharge.

2. Ext.A4 is a disability certificate issued by Dr.M.Shantharam Shetty and also signed by Dr.S.Adyanthaya, Casuality Medical Officer of City Hospital on 19.6.'97, certifying that the petitioner was operated upon for the fracture of right femur supracondylar. She was re-admitted twice for physiotherapy. On examination, the petitioner had restriction of last 70^0 of flexion. He was again treated by PW3 doctor and continued treatment as the sinus discharge was not stopped. Thereafter she resorted to Ayurvedic treatment. Ext.A5 is the disability certificate issued by the

Medical Board. As per the certificate, there is 35% disability and there is 5cm shortening. The Tribunal found that 35% disability assessed is only to the leg and therefore assessed 14% as the whole body disability. It is contended that it is not stated in the medical certificate that 35% disability is to the leg alone. But, considering the fracture and nature of disability, we agree with the assessment of the Tribunal. With regard to the income, petitioner claimed that she was employed as a typist in a lawyer's office and she was getting Rs.2,100/= as the monthly income. Tribunal accepted that she was a typist. In the F.I. Statement also it is stated that she was a typist. The accident occurred on 8.2.1996. In 1994 when second schedule was framed, notional income of a non-earning person, even a minor child, was fixed at Rs.1,250/= (Rs.15,000/= per year). In the above circumstances, we are of the opinion that Rs.2,000/= can be taken as the monthly income. Taking second schedule as guidance, 17 was taken as the multiplier. If that be so, compensation payable for 14% disability will be Rs.2000 x 12 x $\frac{14}{100}$ x 17= 57,120/=. The Tribunal has granted Rs.35,700/=. Therefore, petitioner is entitled to an additional amount of Rs.21,420/= under this head. The entire medical expenses were reimbursed by the Tribunal. The Tribunal has assessed a reasonable compensation for pain and suffering and compensation granted under all other head are in a reasonable

manner. Therefore, no enhancement is needed under other heads. The additional amount of Rs.21,420/=, over and above the decreed amount by the Tribunal, should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

tks